

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

GBI HOLDING CO.,

Plaintiff,

v.

CITY OF CHELAN,

Defendant.

NO: 12-CV-0089-TOR

ORDER RE: MOTION TO REMAND
AND MOTION TO DISMISS

Before the Court are Plaintiff's Motion to Remand (ECF No. 8) and Defendant's Motion to Dismiss for Failure to State a Claim or for Judgment on the Pleadings (ECF No. 11). The motions were heard without oral argument.

INTRODUCTION

This lawsuit involves a dispute over a conditional land use permit issued by the City of Chelan ("the City") to GBI Holding Co. ("GBI") and an administrative appeal of the conditions imposed therein. GBI filed the lawsuit in Chelan County Superior Court under, *inter alia*, the Washington Land Use Planning Act

1 (“LUPA”) and 42 U.S.C. § 1983. The City subsequently removed the case to this
2 Court on the ground that GBI’s § 1983 claim presented a federal question. GBI
3 has since moved to remand the case back to Chelan County Superior Court. The
4 City, for its part, has moved to dismiss GBI’s state law claims for failure to state a
5 claim, or, in the alternative, for judgment on the pleadings.

6 **FACTS AND PROCEDURAL HISTORY**

7 GBI owns a parcel of land abutting Lake Chelan commonly referred to as
8 the “Three Fingers.” In early 2011, GBI applied to the City of Chelan for a permit
9 to subdivide the parcel in preparation for further development. In July of 2011, the
10 City’s Community Development Department approved the application and granted
11 GBI a land use permit subject to several conditions. Among other things, the
12 conditions imposed by the permit required GBI to dedicate two of the subdivided
13 parcels to open public space and to make certain improvements to the land to
14 facilitate public access.

15 GBI timely appealed the conditions imposed by the land use permit to the
16 City Hearing Examiner pursuant to Chelan Municipal Code Chapter 19.34. On
17 September 14, 2011, the hearing examiner issued a scheduling order establishing
18 various deadlines applicable to the administrative appeal proceeding. Shortly
19 thereafter, the City moved to stay the administrative appeal pending resolution of a
20 lawsuit that had been filed against the City and GBI by a local advocacy group in

1 Chelan County Superior Court.¹ GBI objected to a stay on the grounds that (1) it
2 had a right to have its administrative appeal decided within sixty (60) days; and (2)
3 staying the administrative appeal would effectively preclude it from developing the
4 property in any manner until the civil lawsuit had been resolved.² The hearing
5 officer overruled GBI's objections and granted the stay, noting that "[m]any of the
6 legal issues to be decided in the [Chelan County Superior Court] matter are
7 identical to the legal issues being asked of the Hearing Examiner," and that "any
8 decision of the Hearing Examiner would be unenforceable to the extent it is in
9 conflict with any [decision by the Chelan County Superior Court]." Def.'s Notice
10 of Removal, ECF No. 1-1, at 20.

11 On January 17, 2012, GBI filed a petition in Chelan County Superior Court
12 pursuant to Washington's Land Use Petition Act ("LUPA"), RCW Chapter
13 36.70C. In this petition, GBI requested relief from the hearing examiner's decision

14 ¹ It appears that this lawsuit involves a challenge to the continued existence of the
15 "Three Fingers" parcel on the ground that the parcel was created by the unlawful
16 dumping of fill materials into Lake Chelan in the 1960's.

17
18 ² Pursuant to Chelan Municipal Code § 18.34.040(E), the filing of an administrative
19 appeal of a land use permit "stay[s] the effective date of the [permit] until such
20 time as the appeal is adjudicated or withdrawn."

1 to stay the administrative appeal on the ground the decision would violate its right
2 to have the appeal decided within sixty days under Chelan Municipal Code
3 § 19.18.100. GBI's petition also requested damages resulting from the delay of its
4 administrative appeal under RCW Chapter 64.40 and 42 U.S.C. § 1983.

5 On February 8, 2012, the City removed the action to this Court on the
6 ground that GBI's claim for damages under § 1983 presented a federal question.
7 Def.'s Notice of Removal, ECF No. 1. On February 27, 2012, GBI moved to
8 remand the case back to Chelan County Superior Court on the grounds that this
9 court should (1) abstain from adjudicating its claims under the abstention doctrine
10 set forth in *Railroad Comm'n v. Pullman Co.*, 312 U.S. 229 (1984); and (2) decline
11 to exercise supplemental jurisdiction over its state-law claims under 28 U.S.C.
12 § 1367(c). ECF No. 8. The City opposed remand on the ground that *Pullman*
13 abstention would be inappropriate and that the court should, at a minimum, retain
14 jurisdiction over GBI's § 1983 claim. ECF No. 15.

15 On March 13, 2012, while its motion to remand was still pending, GBI filed
16 an "Amended Land Use Petition" in this Court. ECF No. 17. In this petition, GBI
17 re-asserted the causes of action set forth in its original petition filed in Chelan
18 County Superior Court and also requested alternative relief in the form of a Writ of
19 Review pursuant to RCW 7.16.040 or a Constitutional Writ under Article IV,
20 Section 6 of the Washington State Constitution. ECF No. 17 at ¶¶ 3.1-3.21. On

1 March 8, 2012, the City moved to dismiss GBI's state law claims, or, in the
2 alternative, for judgment on the pleadings. ECF No. 11. The City's motion does
3 not seek dismissal or judgment on the pleadings relative to GBI's § 1983 claim.
4

5 ANALYSIS

6 Title 28 United States Code Section 1441 governs removal of cases from
7 state court to federal court. Generally, a defendant may remove a case to federal
8 court if the federal court would have subject-matter jurisdiction over one or more
9 of the plaintiff's claims pursuant to 28 U.S.C. §§ 1331 (federal question) or 1332
10 (diversity of citizenship). *See* 28 U.S.C. § 1441(a), (b). Once a case has been
11 properly removed, a federal court must generally entertain all claims over which it
12 has original subject-matter jurisdiction. *See Quackenbush v. Allstate Ins. Co.*, 517
13 U.S. 706, 716 (1996) (noting that "federal courts have a strict duty to exercise the
14 jurisdiction that is conferred upon them by Congress" in removal proceedings).

15 When a case is removed to federal court on the basis of federal question
16 jurisdiction, a court must first verify that it does in fact have federal question
17 jurisdiction over at least one of the plaintiff's claims. If the court concludes that
18 federal question jurisdiction over at least one claim is present, it must then decide
19 whether to exercise supplemental jurisdiction over any other "pendent" claims that
20 do not present a federal question. *See* 28 U.S.C. § 1367(a); *Carnegie-Mellon Univ.*

1 v. *Cohill*, 484 U.S. 343, 350-51 (1988); 14B Charles A Wright, et al., *Federal*
2 *Practice and Procedure* § 3722 (4th ed. 2012) (noting that, in the context of
3 removal based upon the existence of a federal question claim, a federal court must
4 decide whether to retain or remand supplemental state law claims).

5 The exercise of a federal court's supplemental jurisdiction over pendent
6 claims was originally addressed by the Supreme Court in *United Mine Workers of*
7 *Am. v. Gibbs*, 383 U.S. 715 (1966). In *Gibbs*, the Court held that federal courts
8 may exercise supplemental jurisdiction over state-law claims in a case that also
9 involves a federal question when the state and federal claims "derive from a
10 common nucleus of operative fact" and are "such that [a plaintiff] would ordinarily
11 be expected to try them all in one judicial proceeding." 383 U.S. at 725. As the
12 Court later noted in *Carnegie-Mellon*, however, "*Gibbs* [also] drew a distinction
13 between the *power* of a federal court to hear state-law claims and the *discretionary*
14 *exercise* of that power." 484 U.S. at 618-19 (emphasis added). Specifically, *Gibbs*
15 emphasized that a federal court presented with pendent state-law claims "should
16 consider and weigh in each case, and at every stage of the litigation, the values of
17 judicial economy, convenience, fairness, and comity in order to decide whether to
18 exercise jurisdiction over a case brought in that court involving pendent state-law
19 claims." *Id.* at 619. Where, for example, the issues presented by pendent state-law
20 claims involve complex questions of state law that are better suited to resolution by

1 state courts, a federal court may decline to exercise supplemental jurisdiction.
2 *Gibbs*, 383 U.S. at 726. “Similarly, if it appears that the state issues substantially
3 predominate, whether in terms of proof, or the scope of the issues raised, or of the
4 comprehensiveness of the remedy sought, the state claims may be dismissed
5 without prejudice and left for resolution to state tribunals.” *Gibbs*, 383 U.S. at
6 726-27.

7 The supplemental jurisdiction framework established in *Gibbs* has since
8 been codified at 28 U.S.C. § 1367. Section 1367 provides, in relevant part,

9 [I]n any civil action of which the district courts have original jurisdiction,
10 the district courts shall have supplemental jurisdiction over all other claims
11 that are so related to claims in the action within such original jurisdiction
that they form part of the same case or controversy under Article III of the
United States Constitution.

* * *

12 The district courts may decline to exercise supplemental jurisdiction over a
claim under subsection (a) if:

- 13 (1) the claim raises a novel or complex issue of State law;
14 (2) the claim substantially predominates over the claim or claim over
which the district court has original jurisdiction;
15 (3) the district court has dismissed all claims over which it has
original jurisdiction; or
16 (4) in exceptional circumstances, there are other compelling reasons
for declining jurisdiction.

17 28 U.S.C. § 1367(a), (c).

18 Thus, under § 1367, a court must perform a two-pronged inquiry when
19 deciding whether to exercise supplemental jurisdiction over pendent claims in a
20 removal proceeding. First, the court must determine whether the pendent claims

1 arise from the “same case or controversy” as the claim(s) over which it has original
 2 jurisdiction pursuant to § 1331. 28 U.S.C. § 1367(a). If this condition is not
 3 satisfied, the court must remand the pendent claims to the state court in which they
 4 were originally filed for lack of subject-matter jurisdiction. 28 U.S.C.
 5 § 1441(c)(2).³

6 Second, if the court concludes that § 1367(a)’s “same case or controversy”
 7 requirement is satisfied, it must then decide whether to exercise supplemental
 8 jurisdiction over the pendent claims based upon the prudential considerations
 9 originally set forth by the Supreme Court in *Gibbs* and now codified at 28 U.S.C.

10 ³ 28 U.S.C. § 1441(c) was amended on December 7, 2011. Despite substantial
 11 modifications to its text, the substance of the rule remains essentially the same.

Old § 1441(c)	New § 1441(c)
<p>13 Whenever a <u>separate and independent claim or cause</u> 14 <u>of action</u> within the jurisdiction conferred by section 15 1331 of this title is joined with <u>one or more otherwise</u> 16 <u>non-removable claims or causes of action</u>, the entire 17 case may be removed and the district court may 18 determine all issues therein, or, in its discretion, may 19 remand all matters in which state law predominates.</p>	<p>(1) If a civil action includes—</p> <p>(A) a claim arising under the Constitution, laws, or treaties of the United States (within the meaning of section 1331 of this title), and</p> <p>(B) <u>a claim not within the original or supplemental</u> <u>jurisdiction of the district court</u> . . . the entire action may be removed if the action would be removable without the inclusion of the claim described in [this subsection].</p> <p>(2) Upon removal of an action described in paragraph (1), the district court shall sever from the action all claims described in paragraph (1)(B) and shall remand the severed claims to the State court from which the action was removed. . . .</p>

1 § 1367(c). To the extent that exercising supplemental jurisdiction would be
2 inconsistent with these considerations, the court may remand the pendent claims to
3 the state court in which they were originally filed. *See Carnegie-Mellon*, 484 U.S.
4 at 350-51; *see also* 14C Charles A. Wright, et al., *Federal Practice and Procedure*
5 § 3739 (4th ed. 2012) (“A federal court exercising subject-matter jurisdiction,
6 whether because the plaintiff commenced the case in federal court or because the
7 defendant removed it there, always has had the option of hearing or dismissing any
8 state law claims that are supplemental to the federal claims that are the basis for
9 jurisdiction.”).

10 Here, the City removed this case to federal court on the ground that GBI’s
11 complaint presents a federal question over which this court has federal question
12 jurisdiction pursuant to 28 U.S.C. § 1331. ECF No. 1 at ¶ 3. The Court finds that
13 GBI’s claim for damages under 42 U.S.C. § 1983 arising from the hearing officer’s
14 decision to stay the administrative appeal proceedings does in fact present a federal
15 question. Accordingly, the Court will exercise original jurisdiction over this claim
16 pursuant to § 1441(a).

17 GBI’s amended complaint also asserts four claims that do not present a
18 federal question: (1) a challenge to the conditions imposed in the land use permit
19 under LUPA; (2) a claim for damages under RCW Chapter 64.40; (3) a request for
20 a Writ of Review under RCW 7.16.040; and (4) a Constitutional Writ under Article

1 IV, Section 6 of the Washington State Constitution. Given that original
2 jurisdiction over GBI's § 1983 claim is proper, the court must now decide whether
3 to exercise supplemental jurisdiction over these "pendent" claims pursuant to
4 § 1367.

5 As an initial matter, the Court finds that GBI's pendent claims clearly arise
6 from the "same case or controversy" as its § 1983 claim. Accordingly, the Court
7 concludes that it is *authorized* to exercise supplemental jurisdiction over these
8 claims pursuant to § 1367(a). Pursuant to § 1367(c), however, the Court must still
9 determine whether it *should* exercise supplemental jurisdiction.

10 After reviewing GBI's Amended Land Use Petition and the pleadings filed
11 in conjunction with GBI's motion to remand and the City's motion to dismiss, the
12 Court concludes that exercising supplemental jurisdiction over GBI's pendent
13 claims would be improper for two reasons. First, GBI's pendent claims under
14 LUPA, RCW Title 64.40, RCW 7.16.040 and the Washington Constitution
15 "substantially predominate" over GBI's claim for damages under § 1983. GBI has
16 expressly conceded that its claim for damages under § 1983 is *secondary* to its
17 claims for damages and other relief under LUPA. *See* Pl.'s Mem. in Supp. of Mot.
18 to Remand, ECF No. 8, at 4 ("[I]f the [Chelan Superior] Court provides economic
19 relief through Chapter 64.40 RCW, then resort to the alternative cause of action
20 under 42 U.S.C. § 1983 will not be necessary."). The Court concurs with this

1 assessment and independently concludes that GBI's petition is overwhelmingly
2 focused upon reversing the hearing examiner's decision to stay the administrative
3 appeal on state law grounds rather than recovering any damages that may flow
4 from that decision under § 1983. Accordingly, the Court concludes that exercising
5 supplemental jurisdiction over GBI's state law claims would be improper under
6 § 1367(c)(2). *See Patel v. Penman*, 103 F.3d 868, 877 (9th Cir. 1996), *overruled*
7 *on other grounds by Unitherm Food Systems, Inc. v. Swift-Eckrich, Inc.*, 546 U.S.
8 394 (2006) (affirming district court's dismissal of state law claim for inverse
9 condemnation where remaining federal claim for damages arising from procedural
10 due process violation under § 1983 "would be a slender federal reed on which to
11 base jurisdiction over a state-law claim as substantial as inverse condemnation").

12 Second, the Court finds that GBI's claims for relief under LUPA, RCW Title
13 64.40, RCW 7.16.040, and the Washington Constitution raise "novel or complex
14 issue[s] of State law" which counsel against an exercise of supplemental
15 jurisdiction in this proceeding. *See* 28 U.S.C. § 1367(c)(1). As the City correctly
16 notes, the central question raised by GBI's pendent claims is whether GBI is
17 entitled to judicial review of the hearing examiner's decision under LUPA. *See*
18 Def.'s Mem. in Supp. of Mot. to Dismiss, ECF No. 12, at 4. This question presents
19 complex and interrelated questions of state real property law, constitutional law
20 and administrative law. Accordingly, the Court concludes that GBI's state law

1 claims must be remanded to the Chelan County Superior Court. *See VH Property*
2 *Corp. v. City of Rancho Palos Verdes*, 622 F.Supp. 2d 958, 970 (C.D. Cal. 2009)
3 (retaining jurisdiction over developer's federal claims against city arising from
4 denial of land development permits while remanding developer's state law claims
5 to state court).

6 Finally, as to GBI's claim for damages under § 1983, the Court concludes
7 that GBI's arguments in favor of abstention under *Pullman* are unpersuasive.
8 While it may be true that federal courts frequently abstain from deciding claims
9 involving the application of state land use planning laws on the ground that such
10 claims "touch[] a sensitive area of social policy" (*see, e.g., San Remo Hotel v. City*
11 *and Cnty. of San Francisco*, 145 F.3d 1095 (9th Cir. 1998)), GBI's claim for
12 damages under § 1983 does not trigger significant social policy concerns. Given
13 that GBI has simply sought damages arising from an administrative official's
14 failure to act, there is no reason to conclude that allowing this claim to proceed in
15 federal court would interfere with substantive questions of local land use planning
16 or zoning choices. In sum, the mere fact that the Chelan Municipal Code provision
17 at issue happens to govern appeals of land use decisions rather than appeals from
18 some other type of routine administrative decision implicating a property right
19 does not trigger the principles of comity and deference embodied in the *Pullman*
20 abstention doctrine. Accordingly, the Court concludes that there is no basis for

1 postponing the exercise of its properly-invoked jurisdiction over GBI's § 1983
2 claim.

3 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 4 1. Plaintiff's Motion to Remand, ECF No. 8, is **GRANTED** in part. The
5 Court hereby **REMANDS** to the Chelan County Superior Court GBI's
6 four claims that do not present a federal question, contained within the
7 Amended Land Use Petition and Complaint, ECF No. 17: (1) a challenge
8 to the conditions imposed in the land use permit under LUPA; (2) a claim
9 for damages under RCW Chapter 64.40; (3) a request for a Writ of
10 Review under RCW 7.16.040; and (4) a Constitutional Writ under Article
11 IV, Section 6 of the Washington State Constitution.
- 12 2. The Court retains one cause of action: GBI's claim for damages under 42
13 U.S.C. § 1983.
- 14 3. The Court **DENIES** Defendant's Motion to Dismiss for Failure to State a
15 Claim or for Judgment on the Pleadings, ECF No. 11.
- 16 4. The Court does not assess costs against either party.

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1 The District Court Clerk is directed to enter this Order, provide copies to
2 counsel and mail a certified copy of this Order and a copy of the Amended Land
3 Use Petition and Complaint, ECF No. 17, to the Clerk of the Chelan County
4 Superior Court.

5 **DATED** this 7th day of May, 2012.

6 *s/ Thomas O. Rice*

7 THOMAS O. RICE
8 United States District Judge
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